

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case Number: 89-20004

v.

HONORABLE AVERN COHN

OSCAR SOLIS,

Defendant.

_____ /

**ORDER ADOPTING REPORT AND RECOMMENDATION AND
DENYING MOTION TO AMEND THE JUDGMENT**

This is a criminal case. On November 9, 1990, defendant was convicted, following a jury trial, of conspiracy to possess with intent to distribute marijuana, in violation of 21 U.S.C. § 841(a)(1) and 846. Defendant failed to appear for sentencing and an arrest warrant was issued on January 24, 1991. Almost eight years later, on September 21, 1998, defendant was arrested on the warrant while in federal custody on other charges. The government then charged defendant with failure to appear, in violation of 18 U.S.C. § 3146(a)(1). On May 27, 1999, defendant was sentenced to 188 months on the drug charge and 21 months consecutive on the failure to appear charge. Defendant's conviction and sentence were affirmed by the Court of Appeals for the Sixth Circuit. United States v. Hernandez, 227 F. 3d 685 (6th Cir. 2000). Defendant then filed a motion under § 2255. The Court denied the motion. See Memorandum Opinion and Order Denying Motion under 28 U.S.C. § 2255, filed July 1, 2002.

In September 2005, defendant filed a motion to amend the judgment under Fed.

R. Crim. P. 36 asking that he be given credit for time served after his arrest, from April 4, 1998 to February 1999. The government filed a response and the matter was referred to a magistrate judge for a report and recommendation (MJRR). On May 31, 2006, the magistrate judge issued a MJRR. The MJRR noted that judicial review of computation of time credits is available only after a defendant exhausts their administrative remedies through the Bureau of Prisons. Because defendant failed to plead exhaustion and failed to respond to a show cause order requiring he demonstrate exhaustion, the magistrate judge recommends that the motion be denied. Defendant has not objected to the MJRR.

Accordingly, the MJRR is adopted as the findings and conclusions of the Court. Defendant's motion is DENIED.

SO ORDERED.

Dated: June 19, 2006

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, June 19, 2006, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager
(313) 234-5160